



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2020-0524; FRL-8762-02-R4]

#### **Air Plan Approval; South Carolina; 2018 General Assembly New Source Review Update**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of State Implementation Plan (SIP) revisions submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SCDHEC or Department), on April 24, 2020. The SIP revisions update the State's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) regulations. Specifically, the SIP revisions add and update several definitions for consistency with the Federal regulations, update public participation requirements for PSD, clarify the applicability of "source impact analysis" for PSD, add an emissions offset banking provision for NNSR, and make administrative updates, such as typographical corrections and renumbering. Finally, the changes incorporate language that addresses the public notice rule provisions for NNSR, which removes the mandatory requirements to provide public notice in a newspaper and instead allows for electronic notice ("e-notice") as an alternate noticing option for the State. EPA is approving these revisions pursuant to the Clean Air Act (CAA or Act) and implementing Federal regulations.

**DATES:** This rule is effective [Insert 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2020-0524. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) website. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at [febres-martinez.andres@epa.gov](mailto:febres-martinez.andres@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On April 24, 2020, SDHEC submitted SIP revisions to EPA for approval that include changes to South Carolina's major source New Source Review (NSR) permitting regulations to make them more closely align with Federal requirements for PSD and NNSR permitting; correct typographical errors; and update internal references, including renumbering throughout both regulations. Specifically, these changes update South Carolina Regulation 61-62.5, Standard No. 7 – *Prevention of Significant Deterioration* and Standard No. 7.1 – *Nonattainment New Source Review*.<sup>1</sup> Additionally, the SIP revisions include an update to the public noticing procedures for

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<sup>1</sup> On April 24, 2020, SDHEC also submitted to EPA SIP revisions to Regulations 61-62.1, Section I – *Definitions*; 61-62.1, Section II – *Permit Requirements*; 61-62.1, Section III – *Emission Inventory and Emissions Statement*; 61-62.1, Section IV – *Source Tests*; 61-62.1, Section V – *Credible Emissions*; 61-62.5, Standard No. 2 – *Ambient Air Quality Standards*; and 61-62.5, Standard 5.2 – *Control of Oxides of Nitrogen (NOx)*. EPA will address these SIP revisions in separate actions.

South Carolina's NNSR regulations to address changes promulgated in the Federal rule entitled "Revisions to Public Notice Provisions in Clean Air Act Permitting Programs," (also referred to as the e-Notice Rule) that was finalized in 2016. *See* 81 FR 71613 (October 18, 2016).<sup>2</sup>

On July 29, 2021, EPA published a notice of proposed rulemaking (NPRM), proposing to approve with some exceptions, the changes submitted by South Carolina on April 24, 2020.<sup>3</sup> *See* 86 FR 40796. Comments on the NPRM were due by August 30, 2021. EPA received only one comment on the NPRM, which was in favor of EPA's action. The one comment received can be found in the docket for this action.

## **II. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of South Carolina's Regulation 61-62.5, Standards No. 7 – *Prevention of Significant Deterioration*, and Standard No. 7.1 – *Nonattainment New Source Review*, both state effective on April 24, 2020, with the exception of paragraph (H), and a portion of paragraphs (A)(10)(t), and (B)(22)(c)(xx), from Regulation 61-62.5, Standard No. 7.1, as discussed in the NPRM.<sup>4</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the

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<sup>2</sup> EPA previously approved e-notice provisions for South Carolina's PSD program. *See* 83 FR 64285 (December 14, 2018). Although the e-notice provisions in the State's NNSR program are being incorporated into the SIP for the first time, the April 24, 2020, SIP revisions also include updates to the already SIP-approved e-notice provisions in South Carolina's SIP-approved PSD program.

<sup>3</sup> For more details on the exemptions to EPA's approval, see the NPRM for this action.

<sup>4</sup> *See* 86 FR 40796 at 40798.

SIP compilation.<sup>5</sup>

### **III. Final Action**

As described in more detail in the NPRM, EPA is approving, with some exceptions, the changes to the South Carolina Regulation 61-62.5, Standards No. 7 – *Prevention of Significant Deterioration*, and Standard No. 7.1 – *Nonattainment New Source Review*, as submitted by South Carolina on April 24, 2020.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

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<sup>5</sup> *See* 62 FR 27968 (May 22, 1997).

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this final rule merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this final rule for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120 (Settlement Act), “all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA

will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 21, 2021.

John Blevins,  
*Acting Regional Administrator,*  
*Region 4.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart PP – South Carolina**

2. Section 52.2120(c) is amended by revising the entries for “Standard No. 7” and “Standard No. 7.1” to read as follows:

#### **§52.2120 Identification of plan.**

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(c) \* \* \*

#### **EPA-Approved South Carolina Regulations**

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Standard No. 7	Prevention of Significant Deterioration	4/24/2020	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	
Standard No. 7.1	Nonattainment New Source Review	4/24/2020	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	Except for paragraph (H) and the ethanol production facilities exclusion in paragraphs (A)(10)(t) and (B)(22)(c)(xx).
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[FR Doc. 2021-23350 Filed: 10/27/2021 8:45 am; Publication Date: 10/28/2021]